STATE OF MICHIGAN
IN THE SUPREME COURT

SHIRLEY HAMILTON, as Personal Representative of the Estate of ROSALIE ACKLEY, Deceased,

Plaintiff-Appellee,

and

BLUE CROSS/BLUE SHIELD OF MICHIGAN,

Intervening Plaintiff,

vs.

MARK F. KULIGOWSKI, D.O.,

Defendant-Appellant.

Supreme Court Docket No: 126275

Court of Appeals Docket No: 244126

Saginaw County Circuit Court No: 00-033440-NH

McKEEN & ASSOCIATES, P.C.
By: BRIAN J. McKEEN (P34123)
ROMANA C. HOWARD (P48996)
Attorneys for Plaintiff
645 Griswold, Suite 4100
Detroit, Michigan 48226
(313) 961-4400

BLUE CROSS BLUE SHIELD OF MICH.
By: JOHN J. HAYS (P14782)
Attorneys for BCBSM
3100 West Road, Suite 120
East Lansing, Michigan 48823
(517) 664-6108

ANDREW W. PRINE, P.C.
By: ANDREW W. PRINE (P33497)
Attorneys for Defendant
206 South Webster
Saginaw, Michigan 48602
(989) 791-7060

AMICUS CURIAE BRIEF OF THE MICHIGAN TRIAL LAWYERS ASSOCIATION

PROOF OF SERVICE

Submitted by:
MARK R. BENDURE (P23490)
Attorneys for Amicus Curiae
Michigan Trial Lawyers Association
645 Griswold, Suite 4100, Detroit, Michigan 48226
(313) 961-1525

TABLE OF CONTENTS

	Page(s)
INDEX OF AUTHORITIES	i
STATEMENT OF QUESTIONS PRESENTED	ii
STATEMENT OF FACTS	1
LAW AND ARGUMENT:	
I. IN A SUIT AGAINST A DOCTOR WHO IS BOARD-CERTIFIED IN THE SPECIALTY OF INTERNAL MEDICINE, AN EXPERT WITNESS WHO IS ALSO BOARD-CERTIFIED IN INTERNAL MEDICINE SATISFIES THE "SAME SPECIALTY" CRITERION OF MCLA 600.2169(1)(a), AND THE WITNESS IS NOT DISQUALIFIED BY ADDITIONAL TRAINING IN A SUB-SPECIALTY OF INTERNAL MEDICINE	5
II. THE MEANING OF "SPECIALTY" IN MCLA 600. 2169(1)(b) IS THE SAME AS IN MCLA 600.2169(1)(a), AND AN EXPERT WITNESS WHO DEVOTES A MAJORITY OF HIS PROFESSIONAL TIME TO PRACTICE OF THE SPECIALTY OF INTERNAL MEDICINE IS QUALIFIED TO TESTIFY AGAINST A DOCTOR SPECIALIZING IN INTERNAL MEDICINE	12

INDEX OF AUTHORITIES

Cases	Page(s)
Drouillard v Stroh Brewery Co, 449 Mich 293, 304; 536 NW2d 530 (1995)	8
Halloran v Bhan, 470 Mich 572; 683 NW2d 129 (2004)	*Passim*
Hamilton v Kuligowski, 261 Mich App 608; 684 NW2d 366 (2004)	1, 2, 3
Hamilton v Kuligowski, 473 Mich 858; 701 NW2d 134 (2005)	3, 4, 6
Lansing Mayor v PSC, 470 Mich 154, 157; 680 NW2d 840 (2004)	7
Phipps v Campbell Wyant & Cannon Foundry, 39 Mich App 199, 216; 197 NW2d 297 (1973)	13
Woodard v Custer, Mich. Sup. Ct. # 124994-5	*Passim*

STATUTES, COURT RULES AND OTHER AUTHORITIES

MCLA 333.17001(1)(a)	5
MCLA 333.17001(a)(ii)(A)	7
MCLA 333.2711(1)(f)	11
MCLA 600.2169	1, 7
MCLA 600.2169(1)(a)	*Passim*
MCLA 600.2169(1)(b)	*Passim*

STATEMENT OF QUESTIONS PRESENTED

I. IN A SUIT AGAINST A DOCTOR WHO IS BOARD-CERTIFIED IN THE SPECIALTY OF INTERNAL MEDICINE, DOES AN EXPERT WITNESS WHO IS ALSO BOARD-CERTIFIED IN INTERNAL MEDICINE SATISFY THE "SAME SPECIALTY" CRITERION OF MCLA 600.2169(1)(a), AND THE WITNESS IS NOT DISQUALIFIED BY ADDITIONAL TRAINING IN A SUB-SPECIALTY OF INTERNAL MEDICINE?

Defendant-Appellant answers "NO".

Plaintiff-Appellee answers "YES".

Amicus MTLA answers "YES".

II. IS THE MEANING OF "SPECIALTY" IN MCLA 600. 2169(1)(b) THE SAME AS IN MCLA 600.2169(1)(a), AND IS AN EXPERT WITNESS WHO DEVOTES A MAJORITY OF HIS PROFESSIONAL TIME TO PRACTICE OF THE SPECIALTY OF INTERNAL MEDICINE QUALIFIED TO TESTIFY AGAINST A DOCTOR SPECIALIZING IN INTERNAL MEDICINE?

Defendant-Appellant answers "NO".

Plaintiff-Appellee answers "YES".

Amicus MTLA answers "YES".

STATEMENT OF FACTS

In the main, Amicus Curiae Michigan Trial Lawyers Association ("MTLA") accepts the factual recitation found in the Briefs of the parties, and the decision of the Court of Appeals, ***Hamilton v Kuligowski*, 261 Mich App 608; 684 NW2d 366 (2004)** ("***Hamilton***"). With regard to the issues presented by this Brief, Amicus believes that a terse review of critical facts is all that is required for application of the standards of **MCLA 600.2169.**

MTLA has filed an Amicus Curiae Brief in ***Woodard v Custer*, # 124994-5**, which involves closely related issues about the interpretation and application of **MCLA 600.2169** ("MTLA ***Woodard*** Brief"). As there explained (*Id*, pp. 8-13), the American Board of Medical Specialties ("ABMS") recognizes 24 "specialty" fields in which doctors may become board-certified. One such "specialty" is "internal medicine" (MTLA ***Woodard*** Brief, Ex. 2). The American Osteopathic Association ("AOA") has recognized about the same number of "specialty" groups, also including "internal medicine" (MTLA ***Woodard*** Brief, Ex. 1). Physicians in these "specialty fields" may acquire additional education in constituent "sub-specialties" (MTLA ***Woodard*** Brief, Ex. 3).

Defendant Kuligowski ("Dr. Kuligowski") is board-certified[1] in the specialty of internal medicine (D. Brief, pp. 1, 6; ***Hamilton*, 261 Mich App at 611**), but has no additional formal training (D. Brief, p. 6). The proposed standard of care expert, Dr. Markowitz, is also board-certified in the speciality of internal medicine (D. Brief, p. 3; ***Hamilton*; 261 Mich App at 609**). Within that specialty, he attained additional training, but not board-certification, in the sub-specialty of infectious disease (D. Brief, p. 6; ***Hamilton*, 261 Mich at 609, 611).** In his testimony, he repeatedly identified infectious disease as a sub-specialty of internal medicine, ***Hamilton,* 261 Mich App at 611.**

It seems undisputed that Dr. Kuligowski was practicing his internal medicine specialty at the time of the alleged malpractice. Plaintiff's essential liability theory is that Dr. Kuligowski violated the standard of care applicable to those specializing in internal medicine. In the trial court, Plaintiff's counsel indicated that the case did not involve infectious disease issues (D. Brief, p. 8). In short, the case involves the specialty of internal medicine in which both Dr. Kuligowski and Mr. Markowitz are board-certified.

---

[1]Defendant's Brief and the Court of Appeals decision describe Dr. Kuligowski as an internal medicine specialist, but do not discuss board-certification. As MTLA understand that he is board certified, this Brief discusses the case with that assumption, although the legal analysis does not hinge on certification.

The trial court concluded that Dr. Markowitz satisfied the relevant statutory qualification of **MCLA 600.2169(1)(a)**, ". . . [I]f the party against whom or on whose behalf the testimony is offered is a specialist who is board certified, the expert witness must be a specialist who is board certified in that specialty". The Court of Appeals reached the same conclusion, ***Hamilton*, 261 Mich App at 610-612.** This Court has granted leave, requesting that parties brief the issue, ***Hamilton v Kuligowski*, 473 Mich 858; 701 NW2d 134 (2005).**

The second statutory criterion in issue is that of **MCLA 600.2169(1)(b)**, which requires that an expert witness, "during the year immediately preceding the date of the occurrence that is the basis for the claim or action, devoted a majority of his or her professional time to . . . [t]he active clinical practice of the same health profession in which the party against whom or on whose behalf the testimony is offered is licensed and, if that party is a specialist, the actual clinical practice of that specialty." According to Defendant's Brief, for the years before and after the alleged malpractice, Dr. Markowitz spent about half of his professional time at his office practicing internal medicine (D. Brief, pp. 6-8). Of that time, about one-half was spent treating patients with an emphasis on infectious diseases, and the rest was spent in treating patients in other areas of internal medicine (*Id*). The rest of Dr. Markowitz's practice is as a consultant at the hospital as required, from 15 to 50 hours per week, primarily

infectious disease patients (*Id*). Thus, all of Dr. Markowitz's practice was in the specialty of internal medicine, the majority in the sub-specialty of infectious diseases and the remainder in other areas of internal medicine.

The trial court concluded that Dr. Markowitz did not satisfy the "practice" requirement of **MCLA 600.2169((1)(b)** and, on that basis, struck his testimony. Since Dr. Markowitz was Plaintiff's standard of care expert, the disqualification ruling resulted in a directed verdict. The Court of Appeals reversed, ***Hamilton, supra***, and this Court has granted leave on that issue as well, ***Hamilton v Kuligowski*, 473 Mich 858; 701 NW2d 134 (2005).**

MTLA now submits this Amicus Curiae Brief. In short, it suggests that Dr. Markowitz is board-certified in, and spent a majority of his time practicing in, the same "specialty" as Defendant Kuligowski - - internal medicine. The additional training, and practice, in a constituent "sub-specialty", infectious disease, does not disqualify him under the statutory "specialty" criteria.

LAW AND ARGUMENT

I. IN A SUIT AGAINST A DOCTOR WHO IS BOARD-CERTIFIED IN THE SPECIALTY OF INTERNAL MEDICINE, AN EXPERT WITNESS WHO IS ALSO BOARD-CERTIFIED IN INTERNAL MEDICINE SATISFIES THE "SAME SPECIALTY" CRITERION OF MCLA 600.2169(1)(a), AND THE WITNESS IS NOT DISQUALIFIED BY ADDITIONAL TRAINING IN A SUB-SPECIALTY OF INTERNAL MEDICINE

In its ***Woodard*** Brief, Amicus MTLA has discussed at length the fact that doctors may be board-certified in discrete "specialty" groups, recognized as such by medical groups such as AOA and ABSM. Within these recognized "specialties", doctors may obtain additional training in constituent "sub-specialties". The distinction between a "specialty" and "sub-specialty" is recognized by physician groups (see MTLA ***Woodard*** Brief, Ex. 1, and 2), as well as the Michigan Legislature [see **MCLA 333.17001(1)(a)**].

In **MCLA 600.2169(1)(a)**, the Legislature articulated the expert witness qualification in terms of the defendant doctor's "specialty". To repeat the language in issue:

> "If the party against whom or on whose behalf the testimony is offered is a specialist, specializes at the time of the occurrence that is the basis for the action in **the same**

> **speciality** as the party against whom or on whose behalf the testimony is offered. However, **if the party** against whom or on whose behalf the testimony is offered **is a specialist who is board certified, the expert witness must be a specialist who is board certified in that speciality.**"

Notably, the Legislature opted **not** to include the term "sub-specialty" in characterizing the requisite "match". MTLA has urged the Court to respect the Legislature's decision to require matching only the defendant's "specialty", rather than imposing a more onerous "sub-specialty" requirement (MTLA ***Woodard*** Brief, pp. 18-36).

Applying that analysis to the ***Hamilton*** facts, the lower courts did not err. Defendant Kuligowski is board-certified in a single specialty, "internal medicine". Dr. Markowitz is likewise board-certified in internal medicine. Under the operant language of **MCLA 600.1629(1)(a)**, since, "the party against whom . . . the testimony is offered [Dr. Kuligowski] is a specialist who is board certified", Dr. Markowitz meets the statutory test, "the expert witness must be a specialist who is board certified in that specialty".

In the face of this plain language, Defendant and Amicus Michigan State Medical Society ("MSMS") essentially argue that "specialty" really means "sub-specialty" (see Defendant's Brief, pp. 15-17, 23, 27, 30; MSMS Brief, pp. 3, 4, 18-23). Then, focusing only on the witness (for Dr. Kuligowski has no "sub-specialty"), they

posit that Dr. Markowitz is not qualified (more accurately, that he is overqualified) as a witness because he has had additional training in infectious disease. Thus, they urge that statute effectively imposes not a floor, but a ceiling, excluding witnesses who are better educated than the defendant. There are numerous flaws with this approach.

In construing a statute, the foremost quest is for the intent of the Legislature. ***Lansing Mayor v PSC*, 470 Mich 154, 157; 680 NW2d 840 (2004); *Halloran v Bhan*, 470 Mich 572, 576; 683 NW2d 129 (2004).** **MCLA 600.2169(1)(a)** is regarded as **raising** the standard of expert qualification, in an effort to assure that expert witnesses have sufficient knowledge, by establishing a statutory minimum of expertise. The construction advocated by Defendant posits the precise opposite intent and effect - - to disqualify Dr. Markowitz because he "knows too much" or has **excessive** expertise (infectious disease training)

Defendant's argument presupposes that the Legislature meant to impose a "sub-specialty" criterion, but was too inarticulate to use that term in **MCLA 600. 2169** [despite having used it in **MCLA 333.17001(a)(ii)(A)**], or that it forgot to include that term. As this Court has frequently stressed, the Legislature's intent is to be determined from the language employed (see MTLA ***Woodard*** Brief, p. 22). That tenet of statutory construction necessarily assumes that the Legislature was sufficiently versed in the English language to express its intent accurately. Accordingly, the Court

should reject a construction which does not respect the Legislature's use of the specific language - - "board certified in the specialty" - - and its rejection of a "sub-specialty" standard - - in describing the criterion for witness qualification. And, it should decline to judicially create a "sub-specialty" "match" requirement which the Legislature abjured [see MTLA *Woodard* Brief, p. 22; ***Drouillard v Stroh Brewery Co*, 449 Mich 293, 304; 536 NW2d 530 (1995)**].

Much of the confusion stems from Defendant's observation that "specialty" includes "sub-specialty". While that may be true in the sense of classification hierarchy, it does not follow that the two terms are synonymous as a matter of statutory construction. A few examples, taken from the discussion of classification hierarchies in the MTLA *Woodard* Brief, pp. 8-10, may help illustrate the point.

A casual discussion of "dogs" would "include" "Labrador retrievers", hence, the reference to the larger group would "include" members of the subgroup. Nonetheless, a statute that requires licensure of "all dogs" means something different than a statute which says, "all Labrador retrievers must be licensed".

Or, one may mention all persons who live in Michigan. This would include, but not be limited to, Detroiters. Thus, while the subgroup "Detroiters" is "included" within that larger group, "Michigan residents", the two terms are not

synonymous. A statute which permitted "Michigan residents" to vote for the State's Governor would be readily understood as describing a different class of qualified voters than "Detroiters".

To use another example, certain lawyers may be characterized as "appellate specialists", while a subgroup may specialize in condemnation appeals. The latter group is included within the larger group of "appellate specialists", and it would be accurate to refer to those handling condemnation appeals as "appellate specialists". Nonetheless, the fact that condemnation appeal attorneys are included within the term "appellate specialists" does not mean that a statutory reference to "appellate specialists" really means "only those specializing in condemnation appeals".

So it is in the setting of this case. Dr. Markowitz, like Dr. Kuligowski, is a member of the class "board certified internal medicine specialists". The fact that his additional training might warrant reference to his sub-specialty in terms like "infectious disease specialist" does not deprive him of membership in the class, "board certified internal medicine specialist". Thus, while a "sub-specialty" is "included" in "specialty" - - by definition, included in the larger group to which it belongs - - the different terms "specialist' and "sub-specialist" nonetheless describe two distinct groups. The Court should respect the Legislature's decision to use "specialty", rather than "sub-specialty", to describe the group to which an expert witness must belong.

The defense argument is also at odds with this Court's decision in ***Halloran v Bhan*, 470 Mich 572; 683 NW2d 129 (2004)**, where the defendant, like Dr. Kuligowski in this case, was board-certified in internal medicine (**470 Mich at 575**), and was practicing his sub-specialty of critical care medicine (*Id*). The expert witness was board-certified in anesthesiology and also had a sub-specialty in critical care medicine (*Id*). Consequently, if the criterion were matching "sub-specialties", the witness and defendant were a "match" and the witness would be qualified. However, if the criterion were matching board-certified specialties, there was no "match" and the witness would be disqualified. Thus, ***Halloran*** framed the issue of whether the statutory language requires matching "specialties" or "sub-specialties".

Answering this very question, the Court held that **MCLA 600. 2169(1)(a)**, "requires that an expert witness share the same board certification as the party against whom or on whose behalf the testimony is offered" (**470 Mich at 577**), irrespective of the matching sub-specialties. In doing so, the Court deferred to the precise language of the statute, rejecting the view that a "sub-specialty" match is called for in **MCLA 600.2169(1)(a) (470 Mich at 578).** Citing the defendant's board certification in internal medicine, which the Court regarded as the doctor's "specialty" (**470 Mich at 579**), the witness was disqualified under the ***Halloran*** analysis (*Id*).

As ***Halloran*** established, where a doctor is board-certified in internal medicine, **that** is the "specialty" referred to in **MCLA 600.2169(1)(a)**, **not** a sub-specialty in which he was practicing. The defense argument in this case erroneously looks to Dr. Markowitz's "sub-specialty" in infectious disease rather than, as ***Halloran*** teaches, the board-certification in internal medicine.

The fallacy of the defense approach is underscored by the facts of this case. The statutory term "specialty" appears in conjunction with "board certified"[2]; *i.e.*, "the expert witness must be a specialist who is board certified in that specialty". In this fashion, **MCLA 600.2169(1)(a)** regards "specialty" as the field in which the defendant and witness are "board certified". Here, Dr. Kuligowski is "board certified" in one field only, internal medicine. Dr. Markowitz is likewise board certified in only that field. The statutory language, "the expert witness must be a specialist who is board certified in that specialty", does not support Defendant's argument that an expert witness board-certified in internal medicine is disqualified by **MCLA 600.2169(1)(a)** from testifying against a defendant who is also board certified in internal medicine.

---

[2]Interestingly, albeit in a different context, **MCLA 333.2711(1)(f)** also identifies "internal medicine" as a "specialty" in which one is "board certified". The field of infectious disease is not so identified.

II. THE MEANING OF "SPECIALTY" IN MCLA 600.2169(1)(b) IS THE SAME AS IN MCLA 600.2169 (1)(a), AND AN EXPERT WITNESS WHO DEVOTES A MAJORITY OF HIS PROFESSIONAL TIME TO PRACTICE OF THE SPECIALTY OF INTERNAL MEDICINE IS QUALIFIED TO TESTIFY AGAINST A DOCTOR SPECIALIZING IN INTERNAL MEDICINE

The issue presented under **MCLA 600.2169(1)(b)** parallels that presented under subsection **(1)(a)**. Both turn on the meaning of "specialty". In subsection **(1)(b)(i)**, the critical criterion is that the witness devotes "a majority of his or her professional time . . . to . . . [t]he active clinical practice of the same health profession [as the defendant] and, **if that party is a specialist, the active clinical practice of that specialty**" (emphasis supplied).

In this case, there is no apparent dispute that Dr. Kuligowski is a "specialist" in the field in which he is board-certified. For qualification under **(1)(b)**, the issue is whether Dr. Markowitz engaged in the "active clinical practice of that specialty". Parsing this phrase, there is seemingly no dispute that Dr. Markowitz's work at his office and hospital satisfies the "active clinical practice" component of the test (see Defendant's Brief, pp. 21-22, MSMS Brief, p. 24).[3] The focus, then, narrows

---

[3]The Court's leave Order invites discussion of the meaning of "active clinical practice". (continued...)

on whether his work was in "that specialty"; *i.e.*, internal medicine.

It is readily apparent that the Legislature used the same critical terms, "specialist" and "specialty", in subsection (b) as it used in subsection (a). There is nothing in the text to suggest that the identical words have different meanings in the different subsections. As a matter of construction, "words used in one place in a statute have the same meaning in every other place in the statute", ***Phipps v Campbell, Wyant & Cannon Foundry*, 39 Mich App 199, 216; 197 NW2d 297 (1972).**

The term "specialty" was used by the Legislature to describe the qualifying field of medicine, **not** "sub-specialty"[4]. For purposes of this case, the relevant "specialty" is internal medicine. As the witness actively practices within that

---

[3](...continued)
Amicus MTLA offers no discussion of the outermost limits of that phrase, since there is no real doubt that it includes the treatment of patients in a medical office and hospital, as performed by Dr. Markowitz.

[4]Defendant and Amicus MSMS lament that "internal medicine" is a broad field, and the appellate court's decision allows testimony from a witness who concentrates on a different sub-specialty than the Defendant (Defendant's Brief, pp. 26, 29, 35-36; MSMS Brief, pp. 5-6). As pointed out in the MTLA *Woodard* Brief, pp. 35-36, concerns about a truly inadequate expert are dealt with under subsections (2) and (3) without distorting the meaning of "specialty" in sub-section (1)(a) and (a)(b).

In all events, Defendant and Amicus do nothing more than identify the **inherent** consequence of the Legislature's selection of the intermediate level of classification, "specialty", rather than the smaller class "sub-specialty". There are ample policy justifications for the legislative choice (see MTLA *Woodard* Brief, pp. 14-16, 29, 30). The wisdom of the Legislature's decision not to require matching sub-specialties is, of course, no impediment to applying the statute as written. *Halloran, supra.*

"specialty", he is qualified under **MCLA 600.2169(1)(b).**

The fact that most of his work is in the sub-group "infectious disease" does not mean that it was in a different "specialty" than internal medicine. Indeed, one who is a member of a subgroup is, by definition, a member of the larger group as well. Again, the previous examples illustrate the point.

Consider a statute that states that "one must be a dog to qualify for a dog license". The fact that a particular animal may belong to the subgroup "Labrador retrievers" scarcely means that he is not a member of the larger group, "dogs" who qualify for a license.

Or, assume a statute that says "one must live in Michigan to vote for Michigan's governor". The fact that one is a member of the subgroup, Detroiters, does not detract from membership in the larger qualifying class, those who "live in Michigan".

Or, consider the attorney who specializes in condemnation appeals. Membership in that subgroup does not change the attorney's membership in the larger group, "appellate specialists".

So it is in this setting. A witness like Dr. Markowitz who practices in the specialty field of internal medicine practices in "that specialty" for purposes of **MCLA 600.2169(1)(b).** This is so, even if he might also be described as a member of the

included sub-group of those concentrating on a sub-specialty like infectious disease.

Once more ***Halloran*** is instructive. There, the defendant was board-certified in internal medicine, and was engaged in the sub-specialty of critical care medicine (**470 Mich at 575).** In describing the specialty the witness was "practicing", this Court looked to the internal medicine specialty, not the sub-specialty (***Halloran* 470 Mich at 578, fn. 5,** ". . . it is uncontested that the defendant physician was practicing internal medicine, not anesthesiology, when he allegedly committed malpractice. Thus, the defendant's internal medicine board certification is a 'relevant' board certificate").

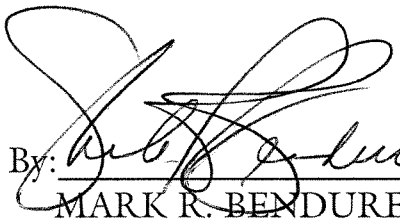
In the final analysis, subsection **(1)(a)** looks to whether the expert witness is a "specialist" in the same "specialty" as the defendant. The "active practice" requirement of subsection **(1)(b)** likewise focuses on whether the witness practices in the same "specialty" as a "specialist" defendant. In each instance, the Legislature's language focuses on the intermediate group "specialty", rather than the smaller subgroup, "sub-specialty". The statute should be construed and applied accordingly.

In the instant case, Dr. Kuligowski is a "specialist" board-certified in the "specialty" of internal medicine, Dr. Markowitz is also a "specialist" in the same "specialty" of internal medicine. The additional training of Dr. Markowitz in infectious disease, and his concentration on that sub-specialty, do not detract from his

membership in the class of doctors practicing in the specialty of internal medicine. As a member of the class of doctors board-certified and practicing in the same specialty as the Defendant, internal medicine, Dr. Markowitz satisfies the statutory qualifying criteria of **MCLA 600.2169(1)(a) and (1)(b).**

Respectfully submitted,

MICHIGAN TRIAL LAWYERS ASSOCIATION



By: _____
MARK R. BENDURE (P23490)
Attorneys for Amicus MTLA
645 Griswold, Suite 4100
Detroit, Michigan 48226
(313) 961-1525

Dated: October 10, 2005

STATE OF MICHIGAN
IN THE SUPREME COURT

SHIRLEY HAMILTON, as Personal Representative of the Estate of ROSALIE ACKLEY, Deceased,

Plaintiff-Appellee,

and

BLUE CROSS/BLUE SHIELD OF MICHIGAN,

Intervening Plaintiff,

vs.

MARK F. KULIGOWSKI, D.O.,

Defendant-Appellant.

Supreme Court Docket No: 126275

Court of Appeals Docket No: 244126

Saginaw County Circuit Court No: 00-033440-NH

McKEEN & ASSOCIATES, P.C.
By: BRIAN J. McKEEN (P34123)
ROMANA C. HOWARD (P48996)
Attorneys for Plaintiff
645 Griswold, Suite 4100
Detroit, Michigan 48226
(313) 961-4400

BLUE CROSS BLUE SHIELD OF MICH.
By: JOHN J. HAYS (P14782)
Attorneys for BCBSM
3100 West Road, Suite 120
East Lansing, Michigan 48823
(517) 664-6108

ANDREW W. PRINE, P.C.
By: ANDREW W. PRINE (P33497)
Attorneys for Defendant
206 South Webster
Saginaw, Michigan 48602
(989) 791-7060

PROOF OF SERVICE

STATE OF MICHIGAN)
)ss.
COUNTY OF WAYNE)

DEBORAH JOHNSON, being first duly sworn, deposes and says that on the 10th day of October, 2005, she caused to be served, **Amicus Curiae Brief of The Michigan Trial Lawyers Association and Proof of Service,** upon:

BRIAN J. McKEEN, ESQ.
McKeen & Associates, P.C.
645 Griswold, Suite 4100
Detroit, Michigan 48226

JOHN J. HAYS, ESQ.
Blue Cross Blue Shield of Michigan
3100 West Road, Suite 120
East Lansing, Michigan 48823

ANDREW W. PRINE, ESQ.
Andrew W. Prine, P.C.
206 South Webster
Saginaw, Michigan 48602

by enclosing copies of same in envelopes with first class postage fully prepaid thereon and depositing them in the U.S. mail at Detroit, Michigan.

DEBORAH JOHNSON

Subscribed and sworn to before me
this 10th day of October, 2005

DIANE M. LOFTUS, Notary Public
Wayne County, Michigan
My Commission Expires: 9/16/08